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FILED
DEC 29 1982
ALEXANDER L. STEVAS,
CLERK

NO. 82-492

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

HERMAN SOLEM, WARDEN, SOUTH DAKOTA STATE PENITENTIARY,

Petitioner,

v.

JERRY BUCKLEY HELM,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

MARK V. MEIERHENRY
ATTORNEY GENERAL

Grant Gormley
Assistant Attorney General
State Capitol
Pierre, South Dakota 57501
Telephone (605) 773-3215
Counsel for Petitioner

John J. Burnett
Attorney at Law
County Courthouse
Rapid City, South Dakota
57701
Telephone (605) 394-2181

Counsel for Respondent

Petition for Certiorari filed September 20, 1982
Certiorari granted November 8, 1982

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THE FOLLOWING MATERIAL WAS REPRODUCED IN THE PETITION FOR WRIT OF CERTIORARI AND WILL NOT BE PLACED IN THE JOINT APPENDIX. THE DOCUMENT IS FOLLOWED BY THE APPROPRIATE PAGE NUMBER FROM THE PETITION FOR WRIT OF CERTIORARI WHERE THE DOCUMENT IS LOCATED.

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RELEVANT DOCKET ENTRIES

DOCKET ENTRY	DATE
State Court Decision	January 16, 1980
Order to Proceed In Forma Pauperis	October 30, 1981
Petitioner's Application for Habeas Corpus relief filed	November 2, 1981
Respondents' Answer to Petitioner's Application for Habeas Corpus	November 6, 1981
Memorandum Opinion finding for Respondent and against Petitioner	December 2, 1981
Order Denying Petitioner's Application for Habeas Corpus	December 2, 1981
Notice of Appeal	December 29, 1981
Affidavits of Ben Dearduff	May 6, 1982
Opinion Granting Petitioner Habeas Corpus Relief	August 4, 1982
Judgment finding for Petitioner	August 4, 1982
Motion for Technical Correction	August 12, 1982
Memorandum in Support of Motion for Technical Correction	August 12, 1982
Stay of Court's Mandate granted	August 26, 1982
Motion for Technical Correction denied	September 3, 1982

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

Jerry Buckley Helm,	)	
	)	
Petitioner,	)	
	)	
v.	)	ORDER
	)	
South Dakota State Penitentiary,	)	
	)	
Respondent.	)	

The Petitioner having moved this Court for its Order granting his motion to proceed in forma pauperis in his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and good cause appearing, it is hereby

ORDERED that the Petitioner's motion to proceed in forma pauperis be, and hereby is, granted.

Dated this 30th day of October, 1981.

BY THE COURT:

ANDREW W. BOGUE
CHIEF JUDGE

ATTEST:
WILLIAM F. CLAYTON, Clerk
By BETTY B. BERRY Deputy

FORM FOR USE IN APPLICATIONS

FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

Jerry Buckley Helm
Name

19446
Prison Number

South Dakota State Penitentiary

Sioux Falls, South Dakota
Place of Confinement

United States District Court _____
District of _____

Case No. _____
(To be supplied by Clerk of U.S. District Court)

JERRY BUCKLEY HELM, PETITIONER
(Full name) (Include name under which you were convicted)

V.

HERMAN SOLEM, Warden of the South Dakota State Penitentiary, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person having custody of petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF South Dakota, ADDITIONAL RESPONDENT.

(If petitioner is attacking a judgment which imposed a sentence to be served in the future,

petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and subscribed to under penalty of perjury as being true and correct. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer any question use reverse side of sheet.

(2) Additional pages are not permitted. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) Upon receipt of a fee of $5.00 your petition will be filed if it is in proper order.

(4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the affidavit on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an

authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds $_____, you must pay the filing fee as required by the rule of the district court.

(5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.

(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.

(7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is

_____
_____
_____.

(8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction under attack Circuit Court, Seventh Judicial Circuit, Rapid City, South Dakota.

2. Date of judgment of conviction April 18, 1979.

3. Length of sentence Life

   Sentencing judge Thomas Parker

4. Nature of offense or offenses for which you were convicted: Uttering a No Account Check--Habitual Offender.

5. What was your plea? (Check one)
   (a) Not guilty ( )
   (b) Guilty (x)
   (c) Nolo contendere ( )
   If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

   _____
   _____
   _____
   _____

6. Kind of trial: (Check one)
   (a) Jury ( )
   (b) Judge only (x)

7. Did you testify at the trial? Yes (x) No ( )

8. Did you appeal from the judgment of conviction? Yes (x) No ( )

9. If you did appeal, answer the following:
   (a) Name of court South Dakota Supreme Court
   (b) Result Judgment Affirmed
   (c) Date of result January 16, 1980
   If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: N/A

   _____
   _____
   _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ( ) No (x)

11. If your answer to 10 was "yes", give the following information:
(a) (1) Name of court _____
(2) Nature of proceeding _____
_____
(3) Grounds raised _____
_____
_____
_____
_____
_____
_____
(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )
(5) Result _____
_____
(6) Date of result _____
(b) As to any second petition, application or motion give the same information:
(1) Name of court _____
_____
(2) Nature of proceeding _____
_____
_____
(3) Grounds raised _____
_____
_____
_____
_____
_____
_____
_____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result _____

_____

(6) Date of result _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

_____

(3) Grounds raised _____

_____

_____

_____

_____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes ( ) No ( )

(2) Second petition, etc. Yes ( ) No ( )

(3) Third petition, etc. Yes ( ) No ( )

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

_____

_____

_____

_____

_____

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of

the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendnent claim].

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which has unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: The sentence imposed constituted cruel and unusual punishment under the Eighth and Fourteenth Amendments.
Supporting FACTS (tell your story briefly without citing cases or law): Defendant was sentenced to life in prison for writing a $100.00 no account check because he had six prior felony convictions which were alleged in the Habitual Offender Information. Life in prison means the defendant is not eligible for parole ever. All prior offenses

were non-violent, alcohol related (3° Burglary, Obtaining Money under False Pretenses, Grand Larceny, Felony Driving WhileUnder the Influence of Alcohol).

B. Ground two: The sentencing procedure denied the defendant due process of law under the Fifth and Fourteenth Amendments.

Supporting FACTS (tell your story briefly without citing cases or law): The sentencing judge imposed the maximum sentence allowable under the law (life in prison) withoutany investigation into defendant's background of character beyond what was alleged in the Information.

C. Ground three: _____

_____

_____

Supporting FACTS (tell your story briefly without citing cases or law):

_____

_____

_____

_____

_____

D. Ground four: _____

_____

_____

Supporting FACTS (tell your story briefly without citing cases or law):

_____

_____

_____

_____

_____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly

what grounds were not so presented, and give your reasons for not presenting them:

_____
_____
_____
_____
_____
_____
_____

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes ( ) No ( )

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
    (a) At preliminary hearing Not Applicable
    (b) At arraignment and plea Joseph Neiles, 505 West Ninth Street, Sioux Falls, South Dakota 57104.
    (c) At trial Not Applicable
    (d) At sentencing Joseph Neiles
    (e) On appeal Joseph Neiles
    (f) In any post-conviction proceeding Not Applicable
    (g) On appeal from any adverse ruling in a post-conviction proceeding: Not Applicable

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes (x) No ( )

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes ( ) No (x)
    (a) If so, give name and location of court which imposed sentence to be served in the future: _____
    _____

(b) And give date and length of sentence to be served in future: _____

_____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes ( ) No ( )

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 15, 1981
(Date)

Jerry Buckley Helm
(Signature)

_____
Signature of Attorney
(if any)

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

JERRY BUCKLEY HELM, Petitioner, v. HERMAN SOLEM, Warden, South Dakota; and MARK V. MEIERHENRY, Attorney General, State of South Dakota, Respondents.	)	CIV 81-5148 RESPONDENTS' ANSWER TO PETITIONER'S APPLICATION FOR HABEAS CORPUS (28 U.S.C.A. § 2254)

TO THE HONORABLE ANDREW W. BOGUE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA:

COMES NOW the Respondents, Herman Solem and Mark V. Meierhenry, by and through their attorney, Grant Gormley, Assistant Attorney General, and submit the following Answer to Petitioner's Application for Habeas Corpus under 28 U.S.C.A. § 2254, alleging that:

1. The sentence imposed on Petitioner was not cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. (Rummel v. Estelle, 445 U.S. 263, 63 L.Ed.2d 382, 100 S.Ct. 1133 (1980)).

2. The procedure, under which Petitioner was sentenced, does not violate the due process clauses of the Fifth and Fourteenth Amendments.

FURTHERMORE, in accordance with Rule 5 of the Rules Concerning § 2254 Cases in the United States District Courts, Respondents inform the Court that:

1. To the best of Respondents' knowledge, Petitioner has not exhausted all available state remedies before applying to this Court for habeas corpus relief under 28 U.S.C.A. § 2254.

2. Available transcripts include all documents contained in the Petitioner's case file, on file with the Pennington County Clerk of Courts.

These records are now in the possession of Respondents' attorney and will be provided upon request of this court.

3. No portions of the trial transcript are appended.

WHEREFORE, Respondents pray that Petitioner's application be denied.

Dated this 4th day of November, 1981, at Pierre, South Dakota.

Grant Gormley
Assistant Attorney General
State Capitol
Pierre, South Dakota 57501-5090
Telephone: (605) 773-3215

Attorney for Respondents

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Respondents' Answer to Petitioner's Application for Habeas Corpus under 28 U.S.C.A. § 2254 and in the case of Jerry Buckley Helm v. Herman Solem and Mark V. Meierhenry, CIV 81-5148 was served by United States mail, first class, postage prepaid, upon Mr. John J. Burnett, Pennington County Courthouse, Rapid City, South Dakota 57701 on this 4th day of November, 1982.

Grant Gormley
Assistant Attorney General

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

File Number: CIV 81-5148

JERRY BUCKLEY HELM, Petitioner V. HERMAN SOLEM, Warden, South Dakota State Penitentiary, Sioux Falls, South Dakota, Respondent.	NOTICE OF APPEAL

Notice is hereby given that Jerry Buckley Helm, Petitioner above-named, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the Order Denying Petitioner's application for a Writ of Habeas Corpus entered in this action on the 2nd day of December, 1981.

A Petition for Certificate of Probable Cause for Appeal was filed in this action on December 11, 1981.

Dated this 29th day of December, 1981.

John J. Burnett
Attorney for Petitioner

OFFICE OF THE PUBLIC
DEFENDER FOR PENNINGTON
COUNTY
Room # 44
Pennington County Courthouse
Rapid City, South Dakota 57701

*
*
*
*
*
*
*

AFFIDAVIT OF
BEN DEARDUFF

* *

I, Ben Dearduff, being first duly sworn upon oath, do depose and state as follows:

That I am employed as the Legal Liaison Officer of the South Dakota State Penitentiary and that as such Legal Liaison Officer I am thoroughly familiar with the record keeping system at said penitentiary.

That I personally researched the records of the South Dakota State Penitentiary and that the two (2) charts entitled COMMUTATION OF LIFE SENTENCE CHART and INMATES SERVING LIFE SENTENCES ON MAY 3, 1982, attached hereto and by this reference incorporated herein, are a complete and accurate disclosure of the information contained in such records regarding:

(1). Every inmate who received a life sentence to the South Dakota State Penitentiary prior to March 1, 1964, and who subsequently received a commutation of such life sentence after March 1, 1964, up to and including the date of this affidavit and

(2). Every inmate now serving a life sentence in the South Dakota State Penitentiary, the date said inmate was received, the date(s) said inmate was denied a commutation of said life sentence, and any other concurrent or consecutive sentences said inmate is serving.

/s/ Ben Dearduff
Ben Dearduff
Affiant

Subscribed and sworn to before me this 3rd day of May, 1982.

/s/ Aldon Lee Meirose

My Commission Expires July 9, 1988

Percy, Dale	7-3-63	1-28-72 6-15-72 9-22-72 1-25-73 6-21-73 9-29-73 1-24-74 9-27-74 1-23-75 5-22-75 9-25-75 1-29-76 5-21-76 9-16-76 1-28-77 5-26-77 9-22-77 2-24-78 5-18-79 1-25-80 1-23-81 2-22-82	
White Hawk, Thomas	1-15-68	5-25-73 9-20-73 2-22-74 10-25-74 2-21-75 7-25-75 4-23-76 5-18-78	Commuted from Death to Life 1969
Kingston, Richard	2-13-68	Never Applied	20 year concurrent sentence
Kindvall, Denver	3-7-70	9-28-78 9-29-79 10-24-80 9-28-81	
Aschmeller, Dale	6-10-71	9-20-73 5-24-74 9-24-74 6-17-75 1-29-76	

INMATES SERVING LIFE SENTENCES ON MAY 3, 1982

INMATE'S NAME	DATE RECEIVED	DATE DENIED COMMUTATION	OTHER SENTENCES
Werner, Max	4-14-39	1-29-76 9-28-78 5-22-80	
Haas, Clifford	12-7-43	5-22-80	
Brim, Robert	11-3-58	1-26-73 5-25-73 9-21-73 5-24-74 2-21-75 6-16-75 11-21-75 2-20-76 5-20-76 9-16-76 1-27-77 6-23-77 9-22-77 3-30-78 1-25-79 5-23-80 5-29-81	
Shaffer, Otis	4-15-63	2-22-74 6-28-74 1-23-75 7-29-77	
Nelson, James	6-10-63	1-22-65 5-27-66 9-23-66 1-24-67 5-26-67 1-23-70 5-22-75 9-25-75 2-19-76 5-21-76 9-16-76 1-28-77	20 year concurrect sentence

Stumes, Norman	3-27-74	Never Applied	3 year consecutive sentence
Satter, Steven	5-10-74	Never Applied	Life sentence concurrent
Hamm, Billy (F)	5-20-74	1-23-75 5-21-76 9-22-77 9-28-78 9-27-79 9-26-80 9-28-81	5 year concurrent sentence
Wood, Gary	7-22-74	6-18-76	
Bush, Alonzo	9-14-75	Never Applied	
Marshall, Richard	4-9-76	12-17-76 9-28-81	
Roggenkamp, Mary	5-10-76	5-26-77 6-23-78 5-22-80 5-29-81	20 year concurrent sentence
Jenkins, David	10-30-76	Never Applied	
Kaseman, Steven	5-26-77	Never Applied	
Martin, John	7-22-77	Never Applied	
Vassar, Jerry	2-9-78	9-29-79 1-23-81 2-22-82	12 year concurrent sentence
Downs, Tommy	3-13-78	9-28-78 9-28-79 9-26-80 10-23-81	5 year concurrent sentence
Kost, Leonard	5-8-78	5-18-79 6-27-80 5-28-81 2-22-82	
Cowell, James	6-13-78	2-16-79 2-29-80	

Aschmeller, Dale (con't)		8-27-76 1-28-77 7-29-77 1-26-78 1-25-79 1-25-80 1-23-81 1-22-82	
Pickering, Patrick	9-18-72	5-24-74 9-29-81	42 year concurrent sentence
Coryell, Frank	11-2-72	9-27-74 6-16-75 8-27-76 1-28-77 12-16-77 9-28-78 10-28-79 1-23-81	
Faller, Larry	5-29-73	10-24-75 6-23-77 1-26-78 2-29-80 1-23-81 2-22-82	10 year concurrent sentence
Adkins, Manford	7-19-73	Never Applied	4 life concurrect sentences
Withorne, Harald	11-23-73	Never Applied	
Proctor, John	11-30-73	5-24-74 6-16-75 8-21-76 5-18-78 2-29-80 10-23-81	2 year concurrent sentence
Thibodeau, Floyd	12-5-73	5-24-74 2-21-75 4-23-76 11-18-76 10-26-79 10-24-80	

Helm, Jerry	4-19-79	5-28-81	
Ristau, Donald	5-17-79	Never Applied	
Curtis, John	2-6-80	Never Applied	25 year concurrent sentence
Standing Soldier, Michael	2-21-80	Never Applied	2@ 25 year & 1 life sentence concurrent
Gregory, Garland	4-21-80	1-23-81 2-22-82	
Garritsen, David	5-2-80	Never Applied	20 year & life sentence concurrent
Lufkins, Dennis	7-15-80	Never Applied	2@ 10 year concurrent sentences
Cody, William	9-24-80	Never Applied	
Howard, Jeffery	8-4-81	Never Applied	
Lohnes, Burton	8-26-81	Never Applied	
Bradford, Gerald	9-10-81	Never Applied	
Caffery, Timothy	12-10-81	Never Applied	
Primeaux, Roscoe	12-30-81	Never Applied	1 - 4 year & 1 - 6 year concurrent sentences

*
*
*
*
* AFFIDAVIT OF
* BEN DEARDUFF
*

* *

I, Ben Dearduff, being first duly sworn upon oath, do depose and state as follows:

That I am employed as the Legal Liaison Officer of the South Dakota State Penitentiary and that as such Legal Liaison Officer I am thoroughly familiar with the record keeping system of the South Dakota State Penitentiary.

That I personally researched the records of the South Dakota State Penitentiary and that the "COMMUNTATION OF LIFE SENTENCE CHART", attached hereto and by this reference incorporated herein, is a complete and accurate disclosure of the information contained in such records regarding every inmate who received a "life" sentence prior to March 1, 1964, and who subse-

quently received a commutation of such life sentence after March 1, 1964, up to and including the date of this affidavit.

/s/ Ben Dearduff
Ben Dearduff
Affiant

Subscribed and sworn to before me this 28th day of April, 1982.

(SEAL) Subscribed and sworn to before me this 28th day of April, 1982

/s/ Aldon Lee Meirose
Notary Public, Minnehaha County
South Dakota
My Commission Expires July 9, 1988

[THIS PAGE INTENTIONALLY LEFT BLANK]

COMMUTATION OF LIFE SENTENCE CHART

INMATE'S NAME	DATE RECEIVED	DATE SENTENCE COMMUTED	DATE PAROLED	DATE OF DISCHARGE	OTHER
Erwin, Earl	4-21-55	10-1-64		9-9-69	
Greycloud, Robert	5-3-52	1-29-65	4-20-67	5-13-79	
Rasch, Selmer	5-3-44	6-10-68	9-9-68	4-3-91	
Elsing, Harry	6-18-61	11-7-69	12-23-69	6-18-83	
Reddington, Harold	5-17-62	11-7-69	12-29-69	8-29-73	
Sanders, Carl	8-25-61	2-5-70	4-1-71		Deceased
Landry, David	5-25-56	10-12-70	3-29-72	10-25-75	
Morgan, Wayne	5-25-56	10-12-70	11-30-71	10-25-76	
Ziegler, Ken	3-1-61	6-2-71	8-2-72		Deceased
Trujillo, Danny	1-17-63	10-11-71	7-10-73	6-17-82	
West, James	6-10-63	10-5-71			Rel on Writ
Parker, John	11-10-50	2-14-72	5-4-72	11-7-73	
McMullin, William	6-28-57	2-14-72	9-24-73	5-29-89	
Reiser, Duane	11-27-62	2-14-72	12-14-73	10-27-99	
Crook, Jody	2-10-58	2-23-73	3-3-73	7-10-77	
Dove, Hugo	6-1-55	6-20-73	12-23-75		Deceased
Huber, Paul	3-12-58	6-20-73	4-30-74	2-12-2005	
Bush, Jerry	10-21-60	2-19-74	4-30-74	3-21-2012	
Johnson, Darrell	2-17-64	3-15-74	7-2-81	1-17-2016	
Thwing, Robert	4-22-52	6-12-74	7-26-74	9-22-96	
Ottoson, Dennis	11-2-62	11-7-74	11-26-74	10-2-2009	
Christensen, Howard	6-5-37	3-7-75			

JUDGMENT
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 82-1039 September Term, 1981

Jerry Helm,

Appellant,

vs.

Herman Solem, Warden, South Dakota State Penitentiary, Sioux Falls, SD,

Appellee

This appeal from the United States District Court for the District of South Dakota was considered on a designated record from the United States District Court and on briefs of the respective parties and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the said District Court in this cause be, and the same is hereby, reversed and remanded to the said District Court with directions to issue the writ if, within sixty

days from the issuance of our mandate, the State has not resentenced Helm.

August 4, 1982

A True Copy:
ATTEST: /s/ Robert D. St. Vrain
Clerk, U.S. Court of Appeals, Eighth Circuit

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IN THE

SUPREME COURT OF THE UNITED STATES

NO. 82-492

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SUPREME COURT, U.S.

HERMAN SOLEM, WARDEN,
SOUTH DAKOTA STATE PENITENTIARY,
Petitioner,

vs.

JERRY BUCKLEY HELM,
Respondent.

MOTION FOR
APPOINTMENT OF COUNSEL

John Joseph Burnett, Director of the Pennington County Public Defender's Office, moves this Court for an order appointing John Joseph Burnett of the Pennington County Public Defender's Office, as Respondent's counsel under Supreme Court Rule 46, upon the reason and upon the grounds as follows:

1. On November 8, 1982, this Court granted Certiorari and also granted leave to proceed in forma pauperis to Respondent.

2. This case involves the validity of a state criminal judgment and of a Federal Court of Appeals judgment in a criminal case.

3. Respondent, presently incarcerated in the South Dakota State Penitentiary, is financially unable to obtain adequate representation or to meet necessary expenses of this Court.

4. Jerry Buckley Helm, Respondent in this case, desires John Joseph Burnett be appointed his counsel in this case.

5. John Joseph Burnett is presently director of the Pennington County Public Defender's Office. He was admitted to the Bar of the State of South Dakota and licensed to practice in South Dakota in May of 1976, has continually practiced law since that date and is presently in good standing in the Bar of South Dakota. John Joseph Burnett is also admitted to practice in the United States District Court, District of South Dakota and in the United States Court of Appeals for the Eighth Judicial Circuit. John Joseph Burnett is also admitted to practice and a member of the Bar of the United States Supreme Court.

6. John Joseph Burnett received his Bachelor of Arts Degree from Saint John's University, Collegeville, Minnesota, May 24, 1970. John Joseph Burnett received the degree of Juris Doctor from the University of South Dakota, School of Law on May 8, 1976.

7. While at the University of South Dakota, John Joseph Burnett was a member of the Moot Court Board and received extensive training in Appellate Advocacy. John Joseph Burnett was admitted to the Order of Barristers upon his graduation from Law School. Since then John Joseph Burnett has had extensive experience in criminal appeals.

8. John Joseph Burnett was a member of the Pennington County Public Defender's Office when the office was appointed Mr. Helm's attorney at the time of his sentence in the Seventh Judicial Circuit, State of South Dakota. The Pennington County Public Defender's Office was also Mr. Helm's attorney in his appeal to the South Dakota Supreme Court.

9. John Joseph Burnett was appointed Mr. Helm's attorney under the Criminal Justice Act of 1964, in Mr. Helm's Petition for Writ of Habeas Corpus in the United States District Court for the District of South Dakota, Western Division. John Joseph Burnett was also appointed Mr. Helm's attorney under the Criminal Justice Act of 1964 in the appeal of the District Court's Denial of the Writ of Habeas Corpus to the United States Court of Appeals for the Eighth Judicial Circuit. The present case before this Court involves appeal of the Eighth Circuit's reversal of the District Court's Denial of the Writ of Habeas Corpus.

10. John Joseph Burnett filed the Brief in Opposition to Petition for Certiorari in this case as well as the Motion for Leave to Proceed in Forma Pauperis for Mr. Helm in this case.

11. Under South Dakota Codified Laws §7-16A-11 (1978) a public defender in South Dakota is expressly authorized to represent a client in a Federal Court of the United States

if the matter arises out f or is related to an action pending or recently pending in a court of criminal jurisdiction of the State, which is the situation in this case. Any compensation paid by a Federal Court of the United States shall be placed directly in the public defender fund.

12. Considering John Joseph Burnett's qualifications, considering his prior involvement in as well as knowledge of this case, and considering Respondent, Mr. Helm's, desire to have John Joseph Burnett represent him in this case, it is respectfully submitted this Court should appoint John Joseph Burnett Respondent's counsel in this case under Supreme Court Rule 46.

Dated this 17 day of December, 1982.

John Joseph Burnett

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